IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12563 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ISHWARINH B VAGHELA - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR DHARMENDU PANDYA for Petitioner(s) : 1,
MRS MANISHA L. SHAH, AGP for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 17/03/2006

ORAL JUDGMENT

1.In the present petition, the petitioner has challenged the order dated 1st/6th July 2000. By the said order, the authorities conveyed to the petitioner that his

case for grant of higher pay scale is declined.

2. Facts as stated by the petitioner in the petition are that the petitioner was appointed as Police Constable on 17th April 1961. He was promoted as a Head Constable with effect from 22nd July 1965. The petitioner himself has stated that before his posting as Police Sub-Inspector, he was under training at PTC, Junagadh for a period of one year. During this training period, he was promoted to the post of First Grade Head Constable in February 1975. The petitioner, however, has stated that since only four months were left out for completion of training period, he declined the promotion and he was thereafter straightway posted as Police Sub-Inspector at Surat on 29.7.75. On the basis of the Government resolution dated 6.2.92, the petitioner is claiming benefit of higher pay-scale since according to him he had completed 9 years in the same cadre. In fact, initially the petitioner was so placed in the higher grade. However, subsequently by the order dated 28.5.92, the same was cancelled. The petitioner has challenged the said action of the respondents and has claimed that by virtue of the Government policy as emerging from the subsequent resolution dated 16.8.94, he was required to be granted

pay-fixation in the higher pay scale of Rs.2060-3200.

3. The respondents have filed affidavit in reply and resisted the petition. Learned AGP Mrs.Shah relied on the averments made by the respondents in the affidavit in reply. In the reply, it has been stated that the petitioner was appointed as Police Constable on 17.4.61, promoted to the post of Head Constable Grade II on 18.4.72, he received second promotion as Head Constable Grade I on 1.2.75 in the pay-scale of Rs.300-430 and his pay was fixed on 1.2.75. The petitioner was posted as a probationer PSI on 29.7.75 and his pay was fixed in the pay scale of Rs.425-600. It is thus the case of the respondents that the petitioner received three promotions in his service career i.e. from the post of Constable to Head Constable Grade II and to Head Constable Grade I and thereafter to the post of PSI. It is denied that he did not accept the promotion to the post of Head Constable Grade I and in fact his pay was actually fixed in the said grade which is also reflected in his service book.

4. The claim of the petitioner for higher pay-scale is based on a Government resolution dated 16.8.94. It is not in dispute that unless those Government servants who have not got at least three promotions in their

service career can seek benefits of the said GR for being placed in the higher scale. The case of the respondent as emerging from the affidavit in reply and as contained in order at Annexure A clearly is that the petitioner actually received three promotions during his service career. The petitioner has not disputed these averments though he has filed his rejoinder. In fact, in the rejoinder he has clearly stated that “it is administrative lapse that while promoting me as Head constable Gr.-I why they did not check my position that is it appropriate to promote me as Head constable Gr.I ? when I had been under training for the post of P.S.I., which is next higher cadre to Head Constable Gr.I.” Thus the petitioner agrees that he was given promotion to the post of Constable Gr.I before his promotion to the post of PSI. In any case, there is material on record to suggest that the petitioner did receive three promotions as suggested. There is no dispute about the fact that the petitioner was actually promoted to the post of Head Constable Grade II and also to the post of PSI. The only dispute is respect to the promotion to the post of Head Constable Grade I. Though in the petition the petitioner contended that he declined promotion, the respondents have made out a

case that his pay was actually fixed in the said grade. Surely the petitioner would have received the benefit of one more pay fixation from that of Constable Grade I to that of PSI which would reflect in his service career and would enhance pay for all times to come. The petitioner, therefore cannot get benefits of yet another higher pay-scale since he had already availed of three promotions.

5. In the result, I find that the petitioner has not made out any case for interference. The petition is therefore, rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)